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July 2, 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Donna Searcey  
Secretary  
Federal Communications Commission  
1919 M Street, NW  
Washington, D.C. 20554

FD-106 (Rev. 1-7-82)

JUL - 2 1993

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Implementation of Sections of )  
the Cable Television Consumer )  
Protection and Competition Act )  
of 1992 )

Rate Regulation )

MM Docket 92-266

**REPLY COMMENTS OF  
METS FANS UNITED/VIRGINIA CONSUMERS FOR CABLE CHOICE<sup>1</sup>  
IN RESPONSE TO FURTHER NOTICE OF PROPOSED RULEMAKING**

The Commission has asked whether it should exclude the rates of low penetration systems in constructing a competitive benchmark. METS Fans United/Virginia Consumers for Cable Choice submits these reply comments in support of comments filed urging the Commission to exclude the rates of low penetration systems.<sup>2</sup>

Congress exempted low penetration systems from new rate regulation under the Cable Act of 1992.<sup>3</sup> Congress did not, however, intend that the rates charged by such systems should be used to establish competitive benchmark rates. In fact, most low

<sup>1</sup> METS Fans United/Virginia Consumers for Cable Choice is an informal association of more than 2,000 past and present cable television subscribers which represents the interests of all cable television subscribers in northern Virginia in having access to additional programming choices -- including WWOR-TV from Secaucus, New Jersey -- at competitive prices.

<sup>2</sup> See, for example, Joint Comments of Bell Atlantic, GTE, and the NYNEX Telephone Companies, Comments of the Consumer Federation of America, and Comments of the National Association of

penetration systems face no multichannel competition, and the average rates charged by such systems exceed those charged by monopoly systems generally.<sup>4</sup> Including low penetration systems in constructing a competitive benchmark will have the effect of inappropriately increasing benchmark rates and affording consumers less relief from excess, monopoly rates charged by local cable operators than Congress intended.

If the rates charged by low penetration systems are used to establish competitive benchmark rates, the benchmark rates are, on average, only 10 percent lower than rates charged by monopoly cable operators today. Excluding rates charged by low penetration systems from the calculation results in benchmark competitive rates that are, on average, 28% lower.<sup>5</sup>

METS Fans United/Virginia Consumers for Cable Choice believes that benchmark rates that are, on average, 28 percent lower than rates currently charged by monopoly cable operators are appropriate to reign in the abusive practices of cable operators who have raised rates more than three times the rate of inflation since 1984.

In the case of Media General Cable in Fairfax County, Virginia, the cost of expanded basic service -- service that is now subject to rate regulation under the Cable Act of 1992 -- has increased 155%, from \$11.36 per month to \$28.95 per month.

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<sup>4</sup> See, FCC, Cable Rate Survey, 1993; and Affidavit of Thomas W. Hazlett, MM Docket 92-266.

<sup>5</sup> See, Report and Order and Further Notice of Proposed Rulemaking, MM docket 92-266, (released May 3, 1993).

Media General Cable subscribers are not able to use cable ready televisions to receive cable programming. They must use a Media General Cable decoder box. As such, the hand held channel and volume selectors that come with most televisions today are useless. Subscribers who wish to use a hand held selector must rent one from Media General Cable for \$2 per month.

In addition, the Media General Cable decoder box is incompatible with home VCR's. Media General Cable subscribers can not use many of their VCR's taping capabilities.

Media General Cable has also engaged in a practice commonly referred to as "tiering," a practice outlawed by the Cable Act of 1992. Media General subscribers who wished to subscribe to premium services such as HBO and Home Team Sports could not do so unless they also subscribed to expanded basic service. For many subscribers the cost of getting HBO was not the price of that service alone, but also the additional \$16 they had to pay each month to upgrade their service from limited basic (currently \$12.95 per month) to expanded basic (currently \$28.95 per month).

Like many cable operators, Media General Cable has used its monopoly power to creatively dip into consumers' pocketbooks and boost its prices to levels well above those that would be found if competition existed for the delivery of multichannel video services in Fairfax County, Virginia.

Attached hereto as APPENDIX I are the results of a poll of cable television subscribers in northern Virginia commissioned by METS Fans United/Virginia Consumers for Cable Choice. The poll

reveals that --

- By a margin of almost five-to-one, northern Virginia cable television subscribers believe that increases in their monthly bills over the last few years were "NOT JUSTIFIED" when compared to increases in the quality of service or programming.
- Ninety-one (91) percent of cable subscribers favor allowing a second company to operate in their community and offer competition to their local cable operator. Sixty-three (63) percent want their jurisdiction to move immediately to bring in a second competing company rather than waiting until the incumbent cable operator's franchise expires.
- Sixty-six (66) percent of Media General Cable subscribers believe that Media General acted like a greedy monopoly when it recently raised monthly rates \$3 and removed WWOR-TV and WBFF-TV from its program lineup. Only 19 percent agreed with Media General Cable's position that as a private company it has the right to raise rates and remove stations that are expensive to carry but not that popular.

The results of the poll clearly indicate that northern Virginia cable television subscribers are dissatisfied with their local cable company's pricing and programming decisions and that they want a second, competing company to provide cable television services.

In light of Media General Cable's predatory pricing practices, METS Fans United/Virginia Consumers for Cable Choice believes that establishing a benchmark rate for Media General Cable that is approximately 28 percent below current rates -- \$20.84 -- is fair and appropriate. To do so, the Commission should exclude the rates charged by low penetration system in constructing a competitive benchmark.

METS Fans United/Virginia Consumers for Cable Choice

understands that rates charged by Media General Cable could exceed the benchmark rate only if the cable operator can demonstrate to Fairfax County and the Commission that their cost of service is greater than the benchmark. However, including the rates of low penetration systems in constructing a competitive benchmark for Media General Cable could result in a base rate of \$26.05 per month. This represents, in effect, a monthly bonus to Media General Cable of \$5.21 per subscriber that does not require any cost of service justification. With an estimated 202,000 subscribers, inclusion of low penetration systems in constructing a competitive benchmark will give Media General Cable a "no questions asked" monthly billing bonus of \$1,052,240, and an annual windfall of \$12,624,880.

Surely, Media General Cable itself would concede that an untouchable benchmark rate of \$26.05 is outrageous. Media General Cable's decision to drop WWOR-TV has been justified based on the alleged "excessive" cost -- approximately \$1.5 million per year -- of carrying it as a third distant signal. In comparison, including low penetration systems in constructing a competitive benchmark for Media General Cable can only be characterized as providing a "super-excessive" gift of more than \$12 million from cable television subscribers in Fairfax County, the City of Falls Church and the City of Fairfax.

METS Fans United/Virginia Consumers for Cable Choice urges the Commission to exclude the rates of low penetration systems in constructing a competitive benchmark. Doing so would allow the

Commission to afford consumers in Fairfax County and across the country meaningful relief from excess rates charged by monopoly

**APPENDIX I**



# SURVEY OF NORTHERN VIRGINIA CABLE SUBSCRIBERS

**APRIL 1993**

PREPARED FOR:  
**METS FANS UNITED/  
VIRGINIA CONSUMERS FOR CABLE CHOICE**

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**FREDERICK/SCHNEIDERS** INC.

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## METHODOLOGY

This is a survey of 700 randomly selected cable subscribers residing in three Northern Virginia jurisdictions -- Fairfax County (and inclusive independent cities), Alexandria, and Arlington County.

Sample size quotas per jurisdiction were as follows:

<u>AREA</u>	<u>SAMPLE SIZE</u>
Fairfax/Ind. Cities	400
Alexandria	250
Arlington	<u>50</u>
<b>TOTAL</b>	<b>700</b>

Interviewing was conducted by telephone during April 15 through April 18, 1993. Calling was conducted by NTS, a 35-station centralized phone facility located in Washington, DC.

Margin of error, at the 95% confidence level, for each jurisdictional subsample is as follows:

<i>Fairfax</i>	5%
<i>Alexandria</i>	6%
<i>Arlington</i>	13%

Margin of error for the total regional sample of 700 (proportionately weighted) is plus or minus 3.7%.

This report contains several documents. These are:

- Summary analysis of findings;
- Total sample results proportionately weighted (master questionnaire and cross tab); and
- Individual jurisdiction results (masters questionnaire and cross tabs for all three areas).

## ANALYSIS OF FINDINGS

### A. RATES.

Three-fourths of Northern Virginia's cable subscribers say rate increases in recent years compared to service/program quality were not justified. Media General customers are most negative about rates. By a margin of five-to-one, Media General customers believe rate increases have not been justified.

#### OPINION OF RATE INCREASES

*If you were to compare increases in your monthly cable bill over the last few years with increases in quality service and programming on cable, would you say that rate increases by your cable company have been justified or not justified?*

		-AREA-		
	TOTAL SAMPLE	FAIRFAX/ MEDIA GEN'L	ALEXANDRIA/ JONES	ARLINGTON/ CABLE TV ARL
Justified	16	15	21	18
Not Justified	73	75	64	70
No Opinion	11	10	15	12

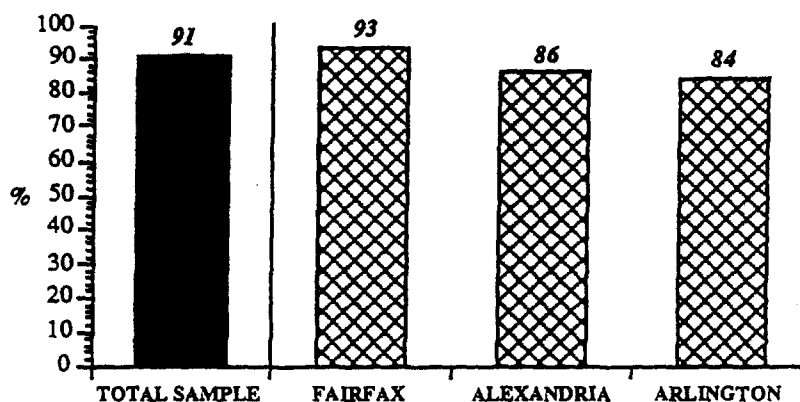
Even in Alexandria, where negative feeling about rates is lowest, subscribers believe that cable rate increases have not been justified by a three-to-one margin.

Tolerance for cable rate increases does not increase with income. Those subscribers regionally with the highest level of dissatisfaction over rate increases are those with family incomes over \$125,000 per year (85% "not justified").

### B. COMPETITION.

Nine out of ten Northern Virginia cable subscribers support cable competition from a second operator. Again, Media General customers lead the pack in anti-status quo views.

**PERCENT WHO "FAVOR" ALLOWING SECOND  
COMPANY TO OFFER CABLE TV\***



**\* EXACT Q WORDING:**

"Would you favor or oppose allowing a second company to operate in your area and offer cable TV competition to Media General/Jones Intercable/Cable TV of Arlington?"

The support in favor of cable competition is nearly universal. Among those with incomes over \$75,000 annual, 98% want a second company offering cable TV.

**C. FRANCHISE TIMING.**

The support for a second cable company option is so strong that 63% of Northern Virginia's cable customers believe their local government should move immediately to bring in a competing company.

In Fairfax, 66% want immediate action on a second franchise; another 24% say they can wait until Media General's current franchise is up for renewal to consider a second company. In comparison, just 4% say Media General should remain the only cable provider in Fairfax.

**PREFERRED FRANCHISE OPTION\***

		--AREA--		
	<u>TOTAL SAMPLE</u>	<u>FAIRFAX/ MEDIA GEN'L</u>	<u>ALEXANDRIA/ JONES</u>	<u>ARLINGTON/ CABLE TV ARL</u>
Renew incumbent as sole franchise.	5	4	10	4
Wait for renewal; bring in second company.	25	24	42	24
Move immediately; bring in second company.	63	66	38	62
(VOL) Don't Know	7	6	11	10

**\* EXACT Q WORDING VARIED BY JURISDICTION:**

Fairfax: "The renewal of Media General franchise is up in 3-4 years. Which of these actions do you think your local government should take?

- Leave things as they are and renew the CHOICE franchise as the only cable company.
- Wait until the franchise renewal is up and move to bring in a second competing company.  
OR
- Move immediate to bring in a second competing company."

Alexandria: "The renewal of Jones Intercable franchise is up next year. Which of these actions do you think your local government should take?"

Arlington: "The renewal of Cable TV of Arlington franchise is up in the year 2000. Which of these actions do you think

Alexandria subscribers want the status quo of just one cable provider.

#### **D. MEDIA GENERAL: RATES AND SERVICE.**

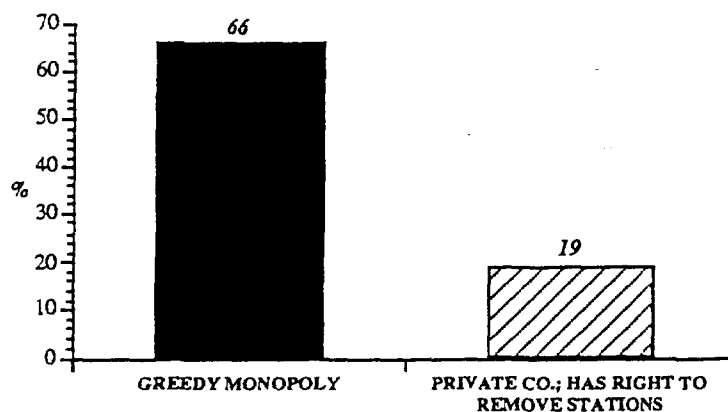
Even when given the option to support the rationale provided by Media General, two-thirds of their customers still say the company has operated more in the interest of money than in the interest of its customers' in recent actions to raise rates and remove channels.

Specifically, the recent move to drop channels on the heels of yearly rate increases is attacked as a move of a "greedy monopoly" not defended as a move by a "private company" with a "right to raise rates and remove stations."

#### **OPINION OF MEDIA GENERAL'S ACTION - FAIRFAX ONLY**

*As you may or may not know, your cable company, Media General, has raised its rates for basic cable service over 150% since 1986. Recently they raised the monthly rate by \$3.00 and, at the same time, they removed channels from service such as the New York station which carries Mets baseball and the Baltimore station, WBFF, Channel 45. Which group do you side with on this issue?*

- *The first group, who say Media General acts as a greedy monopoly who cares more about making money than serving its customers. OR*
- *The second group, who say Media General is a private company and has a right to raise rates and remove stations that are expensive to carry but not that popular.*



Even among wealthy and Republican subscribers, at least three-fifths condemn, not defend, Media General's corporate actions.

#### **F SUMMARY**